

## MEMORANDUM

**TO:** Executive Committee of the American Society of Comparative Law  
**FROM:** John Reitz  
**DATE:** January 17, 2014  
**RE:** 2012 and 2013 Annual Meetings of the American Council of Learned Societies

**Introduction:** On May 10-12, 2012, I attended the 2012 annual meeting of the American Council of Learned Societies (“Council”) as the delegate from the American Society of Comparative Law (“Society”). On May 9-11, 2013, I attended the 2013 annual meeting. The 2012 meeting was held in Philadelphia and the 2013 meeting was held in Baltimore. Jim Nafziger also attended both meetings as our representative to the conference of administrative officers (CAO). Jim is our long-time liaison for administrative matters; these were my first times to represent the Society. The administrative officers from each member society attend the annual meeting but the CAO also has its own separate meetings with regard to administrative issues that generally affect learned societies.

As of the 2013 annual meeting, the Council consisted of 71 constituent societies. President Pauline Yu energetically manages a small but effective staff. The Council manages a very large program of research grants, some aimed at senior scholars, but quite a few programs aimed at junior level scholars (doctoral and post-doctoral level). The Council is, as it says on its website, “the leading private institution supporting scholars in the humanities and related social sciences at the doctoral and post-doctoral level.” In 2012-13 competition year, it awarded some \$15.3 million to more than 300 scholars, selected from almost 4,000 applications. Legal studies are specifically mentioned as potentially falling within the ambit of the Council’s focus on “the humanities and related social sciences.” Grant applicants are cautioned that to qualify for Council grant programs, the proposed research must “employ predominantly humanistic approaches and qualitative/interpretive methodologies.” But “cross-disciplinary humanities and related social studies are welcome,” so I believe that many comparative law projects would easily fit into the Council grant programs. Some of the grant programs are for specific parts of the world, like China or Africa, but most are not limited to specific areas or languages. There is further information about the various grant programs on the Council’s website at <http://www.acls.org/>.

The CAO, in which Jim Nafziger represents us, has undertaken numerous programs addressing issues of comparative law or otherwise assisting us directly. For example, the CAO was the prime mover in organizing a successful day-long workshop on Islamic Law at the AALS annual meeting a few years ago. A more recent session involved the issue of libel tourism. Then, last year, the CAO successfully bid for a training session at the Rockefeller Archives Center on establishing and maintaining archives in learned societies. Participation was strictly limited, but we successfully applied for a spot because of our long-standing question of what to do with more than fifty years of scattered records. Jim attended the workshop and presented a report on it and archival issues, with a set of recommendations, to the Executive Committee during our 2012 annual meeting.

The Executive Committee recommended the report to the Board of Directors, which considered it at our recent annual meeting in Little Rock. The Board adopted the report and asked Patrick Glenn, as our new President, to appoint a small committee to review the report’s recommendations and develop a plan of action. It is thought that the committee’s agenda will focus on collecting what documents are worth archiving, locating what is apt to be a rather modestly sized repository with no budgetary implications for us, and developing protocols for the future including a plan for collecting and archiving the most important electronic communications. The committee has been asked to report to the Board of Directors at our 2014 annual meeting. The rest of this report is limited to the issues discussed at the 2012 and 2013

annual meetings of the Council.

**Issues concerning learned society journals and open access:** In 2012, one major program concerned the changing economics of humanities and social science journals and the impact of open access publishing. Panelists included Kathleen Keane, director of Johns Hopkins University Press; Patrick Kelly, vice-president and publishing director of Wiley Publishing; and Deanna Marcum, managing director, Ithaka S+R. The moderator was William Davis, executive director of the American Anthropological Association. Like our journal, journals of many learned societies have required subscription fees, and to the extent they put their material online, they charge user fees to download specific articles. As we know from our own experiences with inquiries from big publishers like Oxford University Press, big publishers are actively exploring publication of small-run journals, like our own, apparently hoping to capitalize on efficiencies of scale or secure footholds in new business areas.

The issue of open access publishing adds to the economic pressures faced by the journals of learned societies because of the ever-rising costs of publication. Open access publishing would require that the material be available online free of charge to the user. Increasingly, scholarly materials especially in the STEM sciences are being made available in this way. The trend is driven in part by federal funding rules that typically require the scholarly products of their funding to be published in open access format. Open access publishing does not eliminate the need to fund the publication of material, so open access journals often charge a publication fee that must be paid by the author or the author's institution. A few learned societies are in the position to subsidize the costs of open access publication with money earned in other society activities, but most are not.

The panelists suggested that the issue of open access is not really a binary choice, but rather a question of picking a point on a spectrum from completely open access to pay-for-access models. For example, a number of fee-based journals are allowing self-archiving of publication prints or at least pre-publication prints, with or without an embargo for some period of time following publication.

In 2013, the 2012 discussion about open access was continued. Panelists spoke of open access as the trend for the future. It contemplates absence of copyright barriers, as well as absence of cost barriers. The creative commons copyright was mentioned as a model. The current publishing model was said to be unsustainable. Considerable market consolidation is taking place as major commercial publishers take up the publications of non-profit, learned societies. But the commercial publishers are expensive and that leads to a disconnect between cost and value. It was asserted, for example, that the percentage that non-profit publications constitute of current citations is much larger than the percentage the same publications constitute of current academic library acquisition budgets.

One very strong agent for change is the National Institutes of Health (NIH), which requires open access publishing for the results of all research it funds. Apparently some 40% of the readers of their studies are coming from the general public. The National Endowment for the Humanities (NEH) also requires depositing one copy of all research they fund in an open access repository that NEH maintains.

Enthusiasts for open access publishing suggest that the Internet is transforming the publishing and archiving processes and scholarly societies should use their prestige to back those changes. One example was given of a society that started experimenting with forms of open access

publishing by putting a few articles on line. They used a six-month embargo period for articles in their research journal and found no big change in subscriptions. Next year they plan to publish their journal only on line.

Somebody has to pay for open access publishing, and there was considerable discussion of various models. There is a shift away from having the user pay to having the producer pay or finding a way to subsidize the producer of content. There is apparently a new society, the Open Access Scholarly Publishers Association, which may be a source for good ideas. The discussion closed with the suggestion that learned societies should think of themselves as acting through their peer reviewed on-line journals as “curators,” selecting the best articles on a given subject and making them available to the public with their imprimatur.

While not fully convinced of all these ideas, I found them stimulating. We certainly need to be thinking about these issues for our own Society.

**Massive open, on-line courses (MOOCs):** At the 2013 meeting, a major panel was dedicated to the issue of MOOCs. The program was chaired by James J. O’Donnell (Georgetown U.), and the panelists were Jeremy Adelman (Spanish, Princeton U.), Howard Lurie (edX), and Jennifer Summit (English, Stanford). Professor O’Donnell originally claimed the title of inventor of the MOOC for courses he taught in the 1970s, but he resigned that claim in favor of Professor Floyd Zolly, who taught courses on the CBS “Sunrise Semester” starting in 1957.

Professor Adelman has been teaching a MOOC, an introductory course on world history. It is a large-scale course with a certain number of students taking the course as a regular class-room course at Princeton and some 93,000 students on line. He initially hoped that the course would foster a real exchange between the Princeton students in the regular class and the students on line, but he did not think that had happened. However, the on-line discussion groups did lead to some meaningful exchanges in those groups. Papers were due by the on-line participants every two weeks and were fanned out to five different persons, so that students were always either writing or commenting on a paper. One lesson learned, according to Edelman, was that scaling up assessment is quite problematic in an interpretive discipline like the humanities, so he felt that much more time and work was needed on teaching the students how to grade papers. The other lessons learned were (1) that MOOCs are a great deal of work and quite expensive to produce (librarians are essential to help with research and to obtain copyright clearances) and (2) the global element of the course worked fairly well, but it had a negative impact on the local, class-room course as students failed to show up for class on a regular basis.

Professor Summit presented the view of MOOCs from a much different environment, namely, San Jose State, where she had spent time as a fellow in administration. San Jose is part of the California State University system which is chronically underfunded and yet educates some 400,000 students. In this environment, MOOCs are seen as potentially a way to cope with these twin problems. San Jose partnered with a private producer of MOOCs, edX. They first used a MOOC-format to offer STEM courses on certain bottle-neck courses that had very high failure rates. The MOOC apparently allowed the less well-prepared students more time and more opportunities to master the material. They then planned to experiment with Professor Sandell’s famous course on justice, but the philosophy department very publically objected in the *Chronicle of Higher Education*. Professor Summit was sympathetic to their concerns about the potential of MOOCs to turn some faculty into second-class citizens, and she also noted that humanities courses are not just about conveying information, but also about modeling how to make sense of the information, and that is much more difficult to do in huge mass classes. But another model for MOOCs that San Jose is experimenting with involves a course on “global

challenges.” The idea is to create a course to be taught on line but put together by multiple professors from several different universities in the California system. The idea is that the course will be more complex than any one university could produce and that it can be customized for each university. The joint course is a way for the universities to cooperate and share production costs and benefit from wider interaction. In this model, the course would be constantly changing.

Howard Lurie describe the business model of edX. It is a non-profit, open-source, research-driven institution. (Other companies in the MOOC business include Udacity and Coursera.) edX works by building partnerships with schools around the world and had released 27 courses as of the 2013 meeting, mostly in STEM subject, but also some in the humanities.

It appears to be much more difficult to adapt humanities courses to the MOOC format than STEM subjects, at least in part for the reasons Professor Summit gave, but there appears to be considerable interest in trying to find a way to put humanities courses in that format, too. Because of the reasons given for the difficulties of adapting humanities courses to the MOOC format, I had previously thought law teaching somewhat immune to the issue of MOOCs, but now I have come to doubt that this view is correct. Of course, we in the law teaching business have our experiences with large-format courses (if not “massive”), and at least some law schools in some other countries like Italy have effectively had MOOCs in their law schools for some time because of enormous class sizes. Moreover, the economics of law schools is currently in crisis, so techniques to cut costs and deliver that part of education that can be delivered in bulk formats have to command a lot of attention. We should think about how we as comparatists can add value to the debate, which will affect all of law teaching.

These annual meetings are an intellectual feast, with addresses by the Council’s President Pauline Yu and keynote speakers like former Congressman James Leach (2013), who had just stepped down from his position as Chairman of the National Endowment for the Humanities and now holds a Chair in Public Affairs as Visiting Professor of Law and Senior Scholar at the University of Iowa, reflecting on the importance and power of the humanities and the current problems in lack of support for the humanities. There are also reports from selected research projects funded by Council grants in the past year and Haskins Prize winners (2012: Joyce Appleby, history professor emerita, University of California; 2013: Robert Alter, professor of Hebrew and comparative literature, California at Berkeley) in both years reflecting on their academic careers, what in broad terms they tried to do, and the impulses they received and the obstacles that they faced.

But the importance of these kinds of meetings does not lie only in the panel discussions and addresses, but also in the contacts that can be made with other organizations and their representatives. In particular, the following societies with interests and concerns that intersect our own are represented at these meetings: American Political Science Association, delegate Richard M. Valelly (Swarthmore College) and CAO Michael Brintnall (Washington, D.C.); American Society for Legal History, CAO Craig Klafter (Harvard) and delegate Constance Backhouse (Ottawa); American Society of International Law, CAO Elizabeth Andersen (Washington, D.C.) and delegate Peter Trooboff, Covington and Burling, D.C.).

The representatives from the American Political Science Association indicated some interest on the part of political science professors in learning about our meetings. I explained how the Society has opened up the membership with the position of “associate member” to accommodate individuals coming from non-member schools. I have not yet followed up on this contact to see if there is a way to advertize our meetings more effectively to members of his society, but I will so do if the Executive Committee thinks it a good idea.